

17-494 SOUTH DAKOTA V. WAYFAIR, INC.

DECISION BELOW: 901 N.W.2d 754

LOWER COURT CASE NUMBER: 28160-a-GAS

QUESTION PRESENTED:

In 1967, this Court held that the dormant commerce clause prohibits a State from requiring catalog retailers to collect sales taxes on sales into the State unless the retailer is "physically present" there. *Nat'l Bellas Hess v. Dep't of Rev. of Ill.*, 386 U.S. 753 (1967).

That rule, questionable even then, became an isolated outlier when *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977), held that only a "substantial nexus" was needed for other state taxes affecting interstate commerce. In *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), this Court was asked to correct that aberration. But despite a vigorous dissent-and the lack of a similar, "physical presence" rule for *any* other type of tax, *id.* at 317-this Court tentatively retained the requirement on *stare decisis* grounds.

The legal and practical developments of the past 25 years strongly recommend revisiting that judgment. *Quill* has grown only more doctrinally aberrant, and has been roundly criticized by members of this Court, including Justices Kennedy, Thomas, and Gorsuch. But while its legal rationales have imploded with experience, its practical impacts have exploded with the rapid growth of online commerce. Today, States' inability to effectively collect sales tax from internet sellers imposes crushing harm on state treasuries and brick-and-mortar retailers alike. "Given these changes ... , it is unwise to delay any longer a reconsideration of the Court's holding in *Quill*." *Direct Mktg. Ass'n v. Brohl*, 135 S. Ct. 1124, 1135 (2015) (Kennedy J., concurring).

The question presented is:

Should this Court abrogate *Quill's* sales-tax-only, physical-presence requirement?

CERT. GRANTED 1/12/2018